The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (CCPR/C/42/Add.10) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of section IX (Freedom of movement and expulsion of aliens) and section X (Freedom of religion and expression) of the list of issues.

2. Mr. PRADO VALLEJO said that he had been shocked by the contempt displayed by the representative of Morocco towards the Baha'i sect when he had said that the Baha'is were permitted to practise their religion and ceremonies at home but not in public and that only religions recognized by the State could be practised in public. That position was in open contravention of the Covenant which, in article 18 (1) stipulated the right to freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. Moreover, under article 2 (1) each State party undertook to respect the rights recognized in the Covenant, without distinction of any kind. The Committee was faced with a situation of inadmissible and open discrimination by Morocco on matters of religion.

3. Mrs. HIGGINS said she had asked whether the combined effect of article 220 of the Criminal Code, article 291 of the Code of Criminal Procedure and the Law on Illegal Assembly and their application could guarantee freedom of religion. She had done so against the background of a Supreme Court judgement of 1985 in the case of Khalili which was entirely typical of the three judgements which she had had an opportunity to consult on those matters. In rejecting the appeal, the Supreme Court had said the fact that the applicant had attended a gathering with 12 other persons constituted an offence to Muslim citizens and a disturbance to public order. That had led to a sentence of imprisonment for having, with 12 other persons, attended a prayer-meeting.

4. She had also asked certain questions on Islamic law regarding marriage and burial which had gone unanswered. Furthermore, Mr. Atmani had reiterated Muslim respect for all the revealed religions but had remarked that the Shiites, in particular, did not like the Baha'is and therefore the Baha'is could, if they must, worship in private but not in public. The answer given on that point revealed that the problem was one of public worship by the Baha'is and not at all a question of offences by them under various articles of the Penal Code, as had been charged. She had been struck by the absence of any reference to the Covenant, as though it did not exist. Morocco had voluntarily chosen to become a party to that instrument, article 18 of which established the obligation to allow freedom to practise one's religion in public as well as in private. The only limitations were those set out in paragraph 3 of that article, which did not apply in the instant case. The argument that such a tiny minority as the Baha'is could generate fear among the Muslim population was unacceptable.

5. Mr. MAVROMMATIS supported the previous speakers. He expressed surprise that, in the circumstances, Morocco had not entered a reservation to the Covenant in respect of freedom of religion. It was now, of course, too late to take such a step.

6. It was the clear duty of the State under the Covenant to protect all religions and to make all facilities, including burial facilities, available to them. The issue called for further investigation.

7. Mr. ATMANI (Morocco), referring to the issue of marriage, said that there were no obstacles to a marriage between a Moroccan Muslim male and a foreign Christian or Jewish woman except as far as succession was concerned. In the case of a Moroccan Muslim woman wishing to marry a Christian or Jewish man it was essential that, prior to the marriage, the intended spouse should convert to Islam. Jews did not recognize marriages between Jews and foreigners.

8. Baha'ism restricted the five foundations of Islam, in particular with regard to the Ramadan fast and daily prayer. Baha'ism was therefore a departure from Islam and was in fact a by-product of British colonialism in the Middle East. It was not related either to the Shiite or to the Sunni branches of Islam and was rejected by both.

9. Article 18 (3) of the International Covenant stipulated that freedom to manifest one's religion or beliefs might be subject to such limitations as were prescribed by law and were necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The limitation of Baha'i rights did not prevent the Baha'is from practising their religion at home but did not allow them to practise it in public.

10. A Baha'i man wishing to marry a Moroccan woman in Morocco must first recant Baha'ism three times before a notary public and thus return to his original religion, namely Islam. Islam was one and indivisible and would always remain so.

11. The CHAIRMAN invited the Moroccan delegation to respond to sections XII, XIII and XIV of the list of issues, which read:

"XII. Protection of the family and children (articles 23 and 24)

(a) Please describe the relevant provisions of the Code of Personal Status and Succession and comment on their compatibility with article 23, paragraph 4, of the Covenant.

(b) Please provide information on the law and practice regarding the employment of minors.

XIII. Right to participate in the conduct of public affairs (article 25)

How is equitable access of women and of religious minorities to public office ensured? What is the percentage of women in elected office and in public employment?

XIV. Rights of persons belonging to minorities (article 27)

Are there any ethnic, religious or linguistic minorities in Morocco? If so, how is the enjoyment of their rights under the Covenant ensured."

12. Mr. ATMANI (Morocco), referring to section XII, said that under article 3 of the Moroccan Nationality Code there were three sets of rules governing respectively the personal status of Moroccan Muslims, Moroccan Jews and non-Muslim and non-Jewish Moroccans. Those rules had their origin in history in so far as originally Morocco had been inhabited by Muslim and Jewish communities only. At the beginning of the twentieth century, however, foreign Powers had arrived in Morocco and had imposed a different system by setting up consular jurisdiction, leading to the Dahir of 12 August 1913 on the civil status of foreigners in Morocco.

13. Moroccan legislation on the family granted power over children to the father, who passed on his religion to them. The legislation also covered natural children, who were affiliated with the mother. Morocco had signed the Convention on the Rights of the Child, although there had been problems in that regard in a Muslim society. International civil conventions had been signed with France and Belgium and were designed to safeguard the family and prevent the uprooting and kidnapping of children. Joint consultative commissions had been set up to settle family differences.

14. Marriage contracted legally and freely between a man and a woman had legal implications and non-observance of obligations had both civil and criminal consequences. Article 115 of the Code of Personal Status provided that the husband was responsible for the maintenance of his wife, who was exonerated from housekeeping expenses. Parental authority was vested in the father, but both parents were responsible for caring for the children.

15. Infidelity was punished under article 491 of the Penal Code; abandonment of the family home was sanctioned by article 479 and non-payment of maintenance by the husband to his wife and children was penalized under article 480.

16. With regard to the right to life, abortion was prohibited by articles 449-457 of the Penal Code and infanticide by article 397. Abortion might, however, be authorized under article 453 of the Penal Code if it was necessary to safeguard the life or health of the mother provided that it was performed by a surgeon with the permission of the husband. The Code of Personal Status and Succession, which was based on article 6 of the Constitution, was applicable in Morocco only to Muslims, non-Muslims being subject to their national laws.

17. The wife could request legal divorce at any time during the marriage on grounds that the husband had ceased to support the household, was incurably ill or had ill-treated or abandoned her.

18. Under Moroccan law, children under the age of 12 were not permitted to work. Juveniles under the age of 18 were prohibited from working in certain trades on grounds of health and security. Article 21 of the Dahir of 24 December 1960 prohibited the work of minors in mines.

19. With regard to the right to participate in the conduct of public affairs, the equal access of women and members of religious minorities to public office was guaranteed by the Constitution. Candidates for public service must be of Moroccan nationality; enjoy civil rights and be of good moral character; meet the applicable physical aptitude requirements; and be in compliance with the law on military service. They must also meet any special age and qualificational conditions for their proposed work. Normally, recruitment to the public service was by competitive examination in which the principle of equality of the sexes was observed. Women enjoyed equality of treatment with men in the public service and were permitted to join the armed forces but must perform civilian tasks. The proportion of women in the public service was about 31 per cent, but in the health and teaching sectors it amounted to 36 per cent. Under article 8 of the Constitution, women enjoyed the same political rights as men, including the right to vote. Women accounted for 47 per cent of all electors, as assessed by the 1991 census. In the communal elections of 1976, 11.8 per cent of those elected had been women but the proportion had risen to 14 per cent in the communal elections of 1983. No women had, however, been elected in the legislative elections of 1984, as a consequence of traditional attitudes which did not yet favour the election of women to such office.

20. There were no problems in Morocco regarding ethnic, religious and linguistic minorities. All Moroccans enjoyed equality under the law.

21. Mr. WENNERGREN said that article 8 of the Moroccan Constitution, to which the Moroccan representative had referred, stated that "all citizens of either sex, of age and enjoying their civil and political rights shall be eligible to vote", a form of wording which implied that there might be circumstances in which citizens did not always enjoy their civil and political rights. Since the report had not touched on that point, he would appreciate an explanation of the circumstances under which citizens could lose their civil and political rights.

22. Mr. HERNDL said that in its initial report the Government of Morocco had made only a brief reference to the rights of minorities under article 27 of the Covenant, although some additional information had been provided verbally during the Committee's discussion of the matter. The second periodic report was only slightly more informative, stating that after over 1,000 years as a melting-pot Moroccan society had blended into a homogeneous entity. He did not dispute that fact, but it did not exclude the existence of minorities within the Moroccan nation. For example, reference had been made earlier to the minority Jewish community. He therefore asked what other minorities there might be in the State that might aspire to the rights enshrined in article 27 of the Covenant. Although the Committee had been assured that the country experienced no friction on ethnic, religious or linguistic grounds, he asked what facilities such minorities as existed, for example European residents, enjoyed with respect to the use of their own language and access by their children to schools where instruction was given in that language.

23. Mr. AGUILAR URBINA concurred with Mr. Wennergren's question regarding withdrawal of civil and political rights.

24. On the question of minorities, his view was that minorities were not necessarily a numerically small group within a population; the term could also apply to larger groups who for various reasons were subject to discrimination. In Latin America, for example, women made up more than half the population but still suffered certain types of discrimination; in some countries it had been necessary to pass laws to protect them which gave them the status of a minority. He asked what criteria were used to determine the existence of a religious minority in Morocco. The Jewish community had been mentioned, but surely the Baha'i community, for instance, would also have to be considered a religious minority. What protection was afforded in Morocco to members of minority religious groups?

25. He understood that although most Moroccans were of Berber descent, Morocco was following a policy of Arabization which placed the Berber language in a minority position. He asked what rights the Berber people enjoyed with regard to protection of their culture and language and to schools in which the Berber language was the medium of instruction. Were they able to publish their own newspapers? He was in possession of information to the effect that the publishers of a paper called Amazigh had been arrested and their newspaper banned. What had been the reason for that action?

26. Mr. SADI, noting that the legal age for marriage was 18 years for men and 15 years for women, asked for an explanation of the provisions of the Code of Personal Status whereby marriage before the age of legal majority was subject to the consent of the wali, or legal guardian, and in the case of the latter refusing his consent or in the case of dispute the matter would be referred to a magistrate (para. 83 (b) of the report). He wondered what such an appeal to a magistrate entailed and what authority was vested in him to rule on such a matter. The report did not make clear what avenues were open to a legal guardian to settle a dispute over a marriage between parties under the age of consent. Furthermore, the Code of Personal Status stated that in exceptional circumstances a magistrate might as a measure of social protection arrange a marriage for a woman who might otherwise be exposed to the risk of moral downfall. He asked for clarification of what was implied by the words "arrange" and "exposed to the risk of moral downfall" in order to elucidate the powers of the magistrate in the case and show whether any element of forced marriage was involved.

27. Mr. ATMANI (Morocco) said that the withdrawal of civil and political rights was a legal penalty applicable under articles 15 and 16 of the Moroccan Criminal Code. Depending on the gravity of the offence of which the defendant had been convicted, the withdrawal of such rights could be imposed for a period of up to 10 years. The purpose of the penalty was to prevent persons unworthy of public confidence from being employed in the public service or in education, from exercising activities of trust or from representing the people in Parliament.

28. Moroccan society was, as Mr. Herndl had said, a melting-pot in which the various components had been fused into a single whole without the development of political minorities, a term which in his view referred to groups that

wished to live a separate existence from the mainstream of a society, from which they had separate national aspirations and might eventually wish to secede. The Jewish community in Morocco, whose rights were respected under Moroccan law, was not a minority according to that definition since it lived in symbiosis with the rest of Moroccan society. Foreigners living in Morocco were free to open schools if they so wished. Moreover, French and Spanish, the languages of the two former colonial Powers, were widely spoken in the country. The Berbers, to whom Mr. Aguilar Urbina had referred, were perhaps more numerous than Arabs in Morocco, but were completely integrated with the rest of the population. In the time of colonial rule, a Dahir had been enacted in 1938 with the intention of driving a wedge between the two communities, but upon independence its provisions had been rejected by the Berbers themselves. The Berbers, like the Arabs, were Muslims first and foremost. Islam was the cement that bonded the nation into a single unit.

29. Marriage under the age of legal consent had been referred to by Mr. Sadi. The wali or legal guardian whose consent was required in such cases was a male member of the family of the woman concerned. Because of the separation of the two sexes in Islamic society, women had need of such a legal guardian to protect their interests and defend their modesty. In the case of women, such as orphans, without a natural guardian, the function of guardian was assumed by the cadi. In Muslim society, the cadi was a very important figure, a magistrate who acted as the guardian and defender of all those without a natural protector, such as the oppressed, the weak, orphans and girls abandoned by their families. That was why he was called upon to intervene in the case of disputes about under-age marriage.

30. Mr. WENNERGREN asked whether, since deprivation of civil and political rights was a legal penalty, it was pronounced at the time sentence was passed on a convicted criminal. Did the period of deprivation of civil and political rights ever extend beyond the period of a prison sentence, thus providing a period of probation following release from prison to ascertain good behaviour before restoration of those rights? Were there any other grounds, such as mental illness, for deprivation of civil or political rights in Morocco?

31. Mr. ATMANI (Morocco) said that deprivation of civil and political rights was a sentence passed on convicted criminals under the terms of the law and had a duration of 2 to a maximum of 10 years. Appeal could be made against the sentence and pardons granted. It was not an automatic sentence, but a decision of the court based on the facts of the case before it. Mental illness, since it was not a crime but a disease, could not be made subject to the legal penalty of deprivation of civil and political rights.

32. The CHAIRMAN said that, as was customary, he would invite members of the Committee to make their concluding comments on the discussion between the Committee and the delegation of Morocco.

33. Mr. EL SHAFEI said he had learned much from the dialogue with the delegation of Morocco; it had elucidated many aspects not only of Moroccan society but of Muslim society in general. The Moroccan delegation had shown

every willingness to engage in discussion with the Committee and had cooperated fully with it. The answers it had provided to the list of issues and to comments made by members of the Committee had been constructive and useful to both parties.

34. The human rights problem in Morocco essentially arose as a result of a conflict between the Constitution and laws that had been enacted before the country had gained its independence. Such legislation was still exerting a negative effect despite efforts to bring it up to date. Furthermore, the laws regulating the practice and enjoyment of human rights had been subject to violation, misinterpretation and misapplication on the part of the authorities, as happened in many other parts of the world. It was significant that, as noted in the report, the provisions of the Covenant had been made part of Moroccan domestic law, giving Moroccan citizens the right to invoke them before the courts, and that in the case of a conflict of law Morocco applied the principle of the supremacy of international law.

35. Although the report asserted the independence of the judiciary, the very broad powers of the Ministry of Justice with regard to disciplinary action against judges and magistrates and interference in their appointment militated against the independence and immunity of judges and rendered their decisions suspect. Furthermore, the report had omitted to mention those provisions of the Civil Code that prohibited citizens of Morocco from objecting to laws on the grounds that they were not in conformity with the Constitution. There were many other laws in Morocco that were in conflict with the provisions of the Covenant but had not been mentioned in the report. Nor had any indication been given of any measures the Government had in view to resolve such conflicts. The Committee would appreciate it if reports by States parties could give an account of difficulties encountered in applying provisions of the Covenant so that discussion could be based on facts.

36. There was no doubt that the Constitution and legislation of Morocco was largely in harmony with the Covenant. Nevertheless, it was clear that certain human rights were being violated in Morocco. He referred in particular to arbitrary arrest, disappearances, deteriorating conditions of imprisonment, failure to abide by the due processes of the law, suppression of political and cultural activities in universities and obstruction of the work of human rights associations.

37. The report, nevertheless, showed some positive developments such as the current reform of criminal procedure and restriction of the duration of remand in custody. Those trends were to be welcomed and further moves to bring current legislation into line with the provisions of the Covenant should be encouraged. He thanked the members of the Moroccan delegation for their constructive contribution to the discussion.

38. Mr. HERNDL thanked the delegation of Morocco for the openness with which it had presented Moroccan legislation to the Committee and answered the Committee's searching questions. The discussion had been a very fruitful one from which the Committee had learned a good deal and which, he hoped, had also been productive for the Moroccan Government.

39. The final paragraph of Morocco's initial report had asserted that Morocco was renewing its links with its legal and spiritual heritage by embarking resolutely on the path of democracy and progress and thus on a path of constant and genuine strengthening of respect for human rights and the rights of citizens. The Moroccan Government had indeed made great efforts to bring its legislation into line with and to implement the provisions of the Covenant.

40. There was little to add to the points already made in the course of discussion with regard to the judicial order in Morocco, but lingering doubts remained as to the practices which still amounted in some cases to an abuse of the provisions of the Covenant and even to an abuse of Morocco's own legislation. The Committee continued to receive reports of political detainees, and of prisons in certain areas where individuals were detained without acknowledgement. There also seemed to be problems with the application of article 14 of the Covenant, and with the length of time allowed for an accused to prepare his defence as well as with the issue of the burden of proof. The Committee had been informed that in some cases individuals had been arrested simply for being in the area in which certain events had taken place, such as demonstrations. It was to be hoped that such practices would be abolished in the very near future.

41. Finally, the Committee had been prevented from discussing the human rights situation in Morocco for the past five years due to the late submission of Morocco's report. It was to be hoped that Morocco's next report would be submitted on time. Meanwhile, the Moroccan Government was to be congratulated on its excellent second report which respected the guidelines laid down by the Committee. It was informative and a good supplement to the initial report, and by repeating certain portions of the latter, it had done much to help the Committee in the current debate and served to clarify certain aspects.

42. Miss CHANET thanked the Moroccan delegation for participating in an exchange of views that had enabled the Committee to bring up the main issues with respect to the application of the Covenant in Morocco. Over the past few days and during the past year the Committee and the Moroccan delegation had managed to maintain links which had made progress possible. The Committee's role, too, in supervising the application of the Covenant had been understood by the Moroccan delegation, which had willingly accepted all questions from Committee members.

43. It could not be said that the members of the Committee were fully satisfied with the replies to their questions, but there had been positive aspects which should be highlighted, in particular the release of a number of political prisoners and the improvement in the position of the Oufkir family. In addition, the delegation had said that the cases of military prisoners held in custody since 1970 and 1971 were in the process of being settled and had indicated that investigations were under way with regard to disappearances of Western Saharans. Those were very positive announcements and the examination of Morocco's third periodic report, which should take place in the fairly near future, would provide an opportunity to assess further progress.

44. A number of concerns remained, however, particularly with regard to liberty and security of person under article 9 of the Covenant. Keeping people in detention beyond their period of sentence was contrary to that

article, but such was the case of a number of military personnel sentenced after the uprising in Kenitra in 1970, a situation aggravated by the fact that among that group was a child, aged 3 at the time, who had never known freedom or his father. She remained concerned, too, by the non-observance of articles 6 and 7, which had been examined in depth at the Committee's fortieth session, and by the deplorable conditions at Tazmamart and their denial by the Moroccan Government in spite of testimony and photographs from all over the world. Indeed the Government had denied the very existence of that detention centre whose conditions had reduced human beings to living dead, people had been held in total secrecy, and several dozen deaths had occurred which had never been revealed. Even though that centre no longer existed it could not be forgotten.

45. There were also the problems posed by Morocco's legislation with regard to the press; article 5 of the Penal Code, for example, allowed seizure both with regard to the national and the foreign press, and seemed to be an obstacle to freedom of expression. In fact freedom of expression was seriously restricted. A Moroccan could not criticize the King without risking 5 to 20 years' imprisonment under article 41 of the Press Code; he could not cast doubts on or make allegations about a court without risking punishment under article 44 of the Press Code; he could not say that the Sahara was not Moroccan territory without running the risk of even more severe punishment; and, finally, under article 220 of the Criminal Code he could not challenge the Muslim faith or manifest any other religion without risking three to five months' imprisonment, as had been seen in the case of the Baha'is. Such restrictions on freedom of expression were incompatible with article 19 of the Covenant; they also made it very difficult for political opposition parties to exist as they could not play their true role in society under such circumstances.

46. The Covenant did not have overriding importance in the Moroccan legal system and was frequently in conflict with Moroccan law in areas such as religious tolerance and the guarantee of equal rights for women. The Moroccan Government had assumed international obligations by subscribing to the Covenant and could not allow domestic law to take precedence over international law.

47. She expressed confidence that the dialogue had enabled the members of the Moroccan delegation to understand the concerns felt by the Committee and that those concerns would be transmitted to their Government.

48. Mr. AGUILAR URBINA expressed pleasure that the dialogue had been so fruitful. It had been gratifying to learn of certain developments in Moroccan law, in particular the decentralization of the administrative tribunals, and to hear the promise of an in-depth inquiry into the missing Saharans. Miss Chanet had already referred to the question of passports for the Oufkir family: it was to be hoped that in other cases where passports had been refused there would soon be a change of policy. Another positive development had been the announcement that the cases of those people who had been sentenced in 1970 were being settled, particularly as most of them had already completed their sentences.

49. Major concerns remained, however, because in spite of assertions to the contrary, the Covenant was quite clearly not being fully applied, and because of the existence of a number of laws contrary to it. As Mr. El Shafei had said, many of those laws dated back to Morocco's colonial period and were not only in contradiction with the Covenant but also with other Moroccan law. It was to be hoped that the Committee's comments would help Morocco apply international human rights standards, particularly in such areas as those covered by articles 6, 7 and 9 of the Covenant. He regretted that most of the points of concern which he had raised remained unanswered.

50. In conclusion, he emphasized that, like all other members of the Committee, he stood ready to help Morocco apply the Covenant in its territory. He took great pride in the cultural ties between the Christians and Mozarabs in the Iberian peninsula which had been transferred to Latin America after 1492 and was honoured to have made the acquaintance of the Moroccan delegation.

51. Mrs. HIGGINS said that the Committee had been very pleased with Morocco's well-balanced albeit late report, with the dialogue and with the Moroccan delegation's readiness to reply to the questions put to it. The days spent together had been fruitful and had sown seeds for the future in the way intended under the Covenant.

52. Like many State party reports and discussions thereon, there had been a mixture of good and bad points. Among the former were the very positive pronouncements made in the course of the dialogue, as enumerated by Miss Chanet. Each and every one of them was a source of gratification and an indication of a desire to comply with human rights obligations. There had been many other good points, too, inter alia, the news of the decentralization of the administrative tribunals, the liberal attitude towards the Jewish community and the position of women in Moroccan society. She had also welcomed the news that the worst prisons were being decommissioned and that a new bill on police custody and preventive detention was to be promulgated. It had also been gratifying to learn of the priority being given by Morocco to the preparation of human rights texts and their dissemination, and to discover that the Moroccan press had published the summary records of the Committee's previous dialogue with the Moroccan delegation.

53. Some of the replies, however, had been disturbing, in particular the statement that any Moroccan who said that the Sahara was not Moroccan had to take the consequences. She was also concerned by the restrictive nature of the law in not allowing criticism of Moroccan institutions or the King and by the situation regarding freedom of religion. There were also problems with the law itself and not merely with its application. She had noted in particular that a state of emergency was a matter for the King under article 35 of the Constitution. She had also noted the absence from the Constitution of guarantees concerning articles 6, 7, 9 and 14 and the sex discrimination evident in the provisions whereby a Muslim man could marry a Jewish or Christian woman but a Muslim woman could only marry a Jewish or Christian man if he had first converted to Islam. She had also observed that, in connection with article 6, there was a crime against the well-being of the nation that was treated as a capital matter, and she had likewise noted the

legal prohibition of access to lawyers, families and doctors during the early phases of detention. Also disturbing was the principle of the Code of Criminal Procedure whereby the statements of the police were given undue weight and were accepted subject only to proof to the contrary, and the laws relating to articles 18 and 19, which did not seem to provide adequate guarantees. In addition, there were problems of application even in areas where the law itself was satisfactory. She had in mind particularly security of person, in which respect effective control over such guarantees as were available seemed frequently and notably absent.

54. She also remained concerned about the unacknowledged prisons and associated herself with everything Miss Chanet had said on that subject, merely adding that the news had been given on an unattributable basis by the Government on 20 September that Tazmamart had been razed. People would have been transferred from there, and it was important to know where they now were: their families were entitled to have such information and to see their relatives restored to them at the earliest opportunity. She continued to be preoccupied about Kalla M'Gouna and about the information the Committee had received that such Saharans as had been released had been instructed to remain silent. The referendum on Western Sahara to be held in 1992, and the conditions in which it was permitted to take place, would be a great test of Morocco's commitment to the right of self-determination.

55. She expressed the hope that the dialogue had been as useful to the Moroccan Government as it had been to the Committee and that the Government would reflect on the observations made. Above all, she hoped that in future the starting-point for efforts in the field of human rights would be the Covenant and that it would be against the Covenant that laws and practices would be tested. In conclusion, she thanked the members of the delegation for their willingness to cooperate with the Committee.

56. Mr. FODOR recalled that in 1990, when consideration of Morocco's second periodic report had begun, the Moroccan delegation had been reluctant to give straight answers or even any answers at all, to questions raised by the Committee, and at a certain point had even challenged the competence of the Committee to raise certain issues which it had considered as purely domestic matters. Since then the delegation's attitude had become more flexible and cooperative and as a result a useful dialogue had taken place in spite of the fact that some of the numerous questions had remained unanswered or had not been answered to the Committee's full satisfaction. In the course of its consideration of the report, the Committee had come to a better understanding of the current human rights situation in Morocco, but regrettably it still had a number of concerns with regard to the implementation of the provisions of the Covenant. If a State party wished to take its international obligations seriously, it should first make its rules fully compatible with those obligations and ensure that the relevant provisions of the international human rights treaties were adequately reflected in its Constitution and legal system. Morocco did not appear fully to have satisfied that requirement, in particular with regard to the principle of presumption of innocence which was the cornerstone of all criminal law and consequently enshrined in the Constitutions of many States. The explanations given in that regard had not been very convincing. Furthermore, there was a

clear distinction between the rights guaranteed by law and actual practice by government organs and officials who frequently acted in violation of the written legal norms. As he saw it, the most severe problems in Morocco, with regard to practice, were posed by the disappearances which had not been properly investigated, the torture committed largely against individuals placed in incommunicado detention and the use of excessive force by the police. The Committee had heard of very few efforts on the part of the Government to punish the perpetrators of torture and had been told that the Ministry of Justice had no knowledge of any unlawful detention centres in the country. That explanation was inadequate in the light of the numerous allegations from reliable sources, and while the news of the recent release of prisoners was most welcome, the fact that detentions had taken place at all and were probably still practised was in itself very disturbing. In addition, having listened to the statement by the delegation in respect of the Baha'i faith in Morocco, the only conclusion he could draw was that the provisions of the Covenant regarding freedom of religion were not adequately implemented there. Finally, article 27 of the Covenant seemed to be interpreted too narrowly, judging from the delegation's statements. The existence in the country of certain groups of different ethnic origin, religion or language was a question of fact and not of policy; that fact should accordingly be recognized by the State, and the relevant provisions of article 27 applied even if the nation was considered constitutionally one and indivisible.

57. In spite of the long list of continuing problems, the latest developments in Morocco held out hope for the future; in particular, the recommended changes in various judicial procedures including solitary confinement and pre-trial detention could bring about considerable improvement in the implementation of the Covenant.

58. Mr. WENNERGREN said he was pleased by the dialogue with the Moroccan delegation and its cooperative attitude, even though some questions had remained unanswered.

59. The Moroccan delegation had stated that the authorities wished to strengthen the state of law in Morocco and that measures were being taken to improve the situation, and examples had been given of improvements in the protracted criminal procedure, in the Penal Code and the press law amongst others. The legislation appeared to be largely satisfactory and in conformity with the articles of the Covenant. However, the state of law so far appeared to have been a hollow affair in the light of the secret detention centres such as Tazmamart and the inhuman conditions prevailing there. Miss Chanet had referred to its inmates as the living dead but he preferred to describe them as being buried alive: it was appalling to think that such conditions could exist for over 20 years in any country. He hoped that such differences between existing legislation and the actual application of the laws in Morrocco could be overcome in the future, for that was essential if human rights were to be upheld there.

60. Another area of concern was the lack of freedom of religion. Article 18 of the Universal Declaration of Human Rights stated that everyone had the right to manifest his religion or belief in teaching, practice, worship and observance, and a parallel provision was included in the Covenant.

It had been observed, however, from reports of other countries where Islam was the State religion, that some Muslim States had problems in applying those principles. It was to be hoped that the Kingdom of Morocco would be able to observe the provisions of the Covenant on religion to the fullest possible extent in the future. In conclusion, he thanked the members of the Moroccan delegation for their contribution to a fruitful dialogue.

61. Mr. MYULLERSON expressed appreciation to the delegation of Morocco for its willingness to participate in the dialogue and for its replies to members' questions. He recognized the Government's efforts to bring domestic legislation into harmony with international human rights standards and particularly with the Covenant, and welcomed the favourable developments that had taken place in recent years, particularly the adoption of the new bill on preventive detention, the amnesty granted to political prisoners and the closure of Tazmamart prison.

62. Although the dialogue had given a better understanding of the human rights situation in Morocco, some questions remained unanswered, while some replies had not been entirely satisfactory. The delegation had not admitted that there was any discrepancy between the requirements of the Covenant and what was being done in practice. The answers given with respect to members of the Baha'i faith were unconvincing. Contrary to the provisions of article 14 (2) of the Covenant, the burden of proof appeared to rest on the defendant. In the area of freedom of expression, no criticism was allowed of the monarchy, the claim to Western Sahara or the ascendancy of Islam. It was most important to see how the referendum on Western Sahara would be conducted, since that would demonstrate Morocco's attitude towards the principle of self-determination of peoples. At the Committee's fortieth session, the delegation of Morocco had denied any knowledge of the existence of the Tazmamart detention centre but had now indicated that it had been closed. He had just seen a report in a Spanish newspaper on conditions in that detention centre, whose very existence was a clear violation of the Covenant and other human rights instruments to which Morocco was a party. He asked the Moroccan delegation to convey his comments to its Government.

63. He again thanked the delegation for its cooperation with the Committee and expressed the hope that the situation in Morocco would continue to improve.

64. Mr. PRADO VALLEJO said that the constructive dialogue with the Moroccan delegation had given it an opportunity to become aware of the points on which the Committee was concerned, and he hoped it would convey to its Government the comments on the need for substantive measures to bring domestic legislation into line with the Covenant. That was particularly important with respect to religious freedom, bearing in mind that religious persecution still existed in Morocco.

65. There was also some discrepancy between Moroccan legislation and what was done in practice. Some progress had nevertheless been made and the Government had shown its willingness to cooperate. It was also encouraging to note that it had released some political prisoners. He was nevertheless concerned about a number of violations of the Covenant.

66. There was evidence of the existence of some three or four secret prisons, about which the Ministry of the Interior had denied any knowledge. Steps should be taken to ascertain the facts in that respect. There had been many arbitrary detentions as a result of police decisions. Detainees had been held for prolonged periods, in many cases after serving their sentences. No effective remedies existed for the victims of such violations.

67. Although the release of some political detainees was to be welcomed, it was regrettable that many were still being held merely for taking part in peaceful demonstrations, and they should be released. Little or nothing had been done to investigate cases of torture. Action should be taken to do so in every case.

68. He thanked the Moroccan delegation for its cooperation and expressed the hope that the dialogue would lead to improved observance of the Covenant.

69. Mr. DIMITRIJEVIC thanked the Moroccan delegation for participating in the dialogue with the Committee and for providing answers to its questions. Over the past year, there had been some favourable developments both in Morocco itself and in the delegation's dialogue with the Committee. Some improvements had been made in the human rights situation and others were promised. For example, there appeared to be greater tolerance of non-governmental organizations and other human rights bodies, without whose work there could be no improvement in the human rights situation of any country. It was understood that lawyers in Morocco had courageously protested about certain practices that were inconsistent with human rights standards, and no reprisals appeared to have been taken against them. In the Committee, the Moroccan delegation had been more responsive than formerly to the comments and questions of members and more willing to engage in dialogue, although there was still room for improvement, since some questions had not been answered fully or had not been given due weight. The delegation had repeatedly ignored Mr. Mavrommatis' question concerning the settlers in Casablanca who had been forced to return to the desert, although it was clearly relevant to the right to freedom of movement and settlement. He hoped the delegation would transmit the Committee's comments to the decision makers in Morocco and that they would view them as a bona fide effort on the part of the Committee to understand the situation and offer some advice that could help to improve it.

70. It was regrettable that there was no provision in the Constitution with respect to presumption of innocence. If no such rule existed, there could be many undesirable consequences. With the shifting of the burden of proof, much had to depend on police reports. It could also lead to preventive detention which could be extended indefinitely if the person concerned was considered a danger to society.

71. Contradictory statements had been made concerning the importance attached to the Covenant and its implementation. It had sometimes been said that only internal law could be applied and sometimes that the existence of the Covenant remedied the abence of certain provisions in Moroccan legislation.

72. Article 18 of the Covenant could not allow of the distinction made in Morocco between revealed and non-revealed religions. It protected all religions and beliefs. The Committee had expressed its views on several occasions about the position of State churches, whose existence could not be interpreted as allowing discrimination against members of other churches.

73. Some curious limitations had been placed on freedom of expression.

74. A further important problem was the distribution of powers and the potential threat that it posed to the impartiality and independence of the judiciary. However, there was some indication that the question was under consideration and that improvements might be made.

75. He hoped the Moroccan delegation would convey the Committee's views to its authorities and that the dialogue would be resumed in the future.

76. Mr. ANDO expressed appreciation to the Moroccan delegation for its excellent cooperation. The dialogue had made it easier to understand Morocco's difficulties and to identify its problems.

77. He expressed concern over the length of pre-trial detention; the lack of a provision concerning presumption of innocence; the restrictions on freedom of expression and association and on freedom of religion; the absence of any provision with respect to equality of the sexes in law and in fact; the continued holding of political prisoners; and the situation regarding the future of Western Sahara.

78. At the Committee's fortieth session, the Moroccan delegation had stated that there were three things that could not be challenged in Morocco: the monarchical system, the country's territorial integrity and the State religion of Islam. While he could sympathize with Morocco's position, particularly after long years of colonial domination and in view of the need to build and maintain political stability, any nation or political system would be all the more stable the greater the differences it could tolerate. Any system should be flexible enough to allow for differences of opinion within it. He hoped Morocco's system would have moved at least slightly in that direction by the time the Committee's dialogue with its delegation was resumed.

79. Mr. SADI said that he hoped the period before the submission and consideration of Morocco's third periodic report would be used not only to remedy the remaining shortcomings in the legislation and practice in the Kingdom but also to reflect on their root causes. A new era of human rights activism had dawned in Morocco and the stage appeared to be set for further consolidation of the ongoing efforts to promote human rights.

80. With respect to the role of Islam, as a Muslim he was happy to note that the Muslim world had been actively involved in the drawing up and adoption of the Covenant. There need be no conflict between the Muslim religion and the Covenant, and he believed that with the right spirit a happy accommodation could be found.

81. Mr. MAVROMMATIS said that he was mainly concerned about the situation in Morocco with respect to detention, freedom of religion and freedom of movement and settlement. He expressed appreciation to the Moroccan delegation for the useful dialogue and requested it to convey the Committee's comments to its Government.

82. The CHAIRMAN thanked the Moroccan delegation for the competent way in which it had dealt with the questions raised by Committee members, thus making it possible to engage in a constructive and open dialogue. Committee members had welcomed certain favourable developments such as the release of political prisoners and the adoption of legislative reforms but had also drawn attention to some unfavourable aspects with respect to freedom of the individual, detention and freedom of expression and religion and to some shortcomings in the administration of justice. It had been pointed out on various occasions that certain laws and practices in Morocco were incompatible with the Covenant. The delegation had stated that not all of the principles observed in the country were contained in formally-adopted legislation and that the provisions of the Covenant were, in fact, applied; but that did not appear to be the case either in law or in practice. It was important, therefore, for legislation and practice to be constantly checked by the competent authorities against the provisions of the Covenant. There had nevertheless been some encouraging recent developments which Committee members had noted, and the Moroccan delegation had announced further positive developments for the future.

83. He hoped that the dialogue with the Committee would provide further food for thought for the Moroccan authorities and would encourage further improvements in the protection of human rights which would be described in the third periodic report. It would not be reasonable to expect the Government to observe the current deadline for the submission of that report, namely 31 October 1991, and the Committee would therefore be asked to set a new one that could be communicated to the Moroccan delegation.

84. Mr. BENHIMA (Morocco) expressed his delegation's appreciation to Committee members for the keen interest they had shown in the consideration of his Government's report. Due note had been taken of the Committee's comments, which would be conveyed to the Moroccan authorities.

85. The international community was unanimous in recognizing that there was no ideal state of law. When he had referred to consolidation at an earlier meeting, he had not meant the consolidation of something fragile or precarious but the consolidation of something strong to make it even stronger through a constant effort for improvement. He welcomed the fact that Committee members had recognized the positive aspects of Moroccan legislation. As His Majesty the King had stated, Morocco's ambition was to expand its horizons in the field of human rights. It would succeed in that endeavour since that was a matter of conviction and Morocco did not undertake anything without the prospect of success. It was determined to work in open and confident cooperation with members of the Committee.

86. He appealed to them to treat any information they might receive with caution if they had insufficient time to verify it. His Majesty the King often said that information was sacred, and it was in the name of the sacrosanct nature of information that he wished to set the record straight. At the Committee's previous session, it had been pointed out that the meetings of the Committee at which States party reports were considered were open and that the rules of procedure in that regard must be respected. The Committee had shown great understanding towards his delegation's attitude while scrupulously respecting those rules. During talks he had had with the Under-Secretary-General for Human Rights and Director-General of the United Nations Office at Geneva, the problem had been discussed of the conditions required to ensure that the dialogue took place in a calm atmosphere free from provocation. He expressed appreciation to the Chairman for his personal contribution to ensuring that those conditions had been met.

87. In a French television news broadcast the previous evening it had been stated that the Moroccan delegation had appeared before the Human Rights Committee for the third time in a year. That was a statement of disinformation if not of ill-will, and he left it to the Chairman and members of the Committee to set the record straight. The broadcast had gone on to say that the Moroccan delegation had announced the release of 61 military officers. His delegation disputed that statement. What had actually occurred in the Committee was that Miss Chanet and Mr. Aguilar Urbina had stated that they understood there had been 61 prisoners in Tazmamart prison, of whom 24 had apparently died, and had asked what had happened to the remaining 37, and Mr. Atmani had replied that their case was being dealt with. It was absolutely essential to ensure that any public information was faithfully reported.

The meeting rose at 1.05 p.m.